IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/03/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.15787 OF 2000
AND
W.M.P.NOs.22913 OF 2000, 8803,8804 & 7823, OF 2001

1. S. Moosa
2. S.O. Abulhasan Kalami
3. M.K.Naina Maraicar
4. M.S. Kader Sahib Maraicar
5. M.A. Sadaqathulla
6. S. Ibnu Soud
7. S.M. Amanullah
8. M.K. Mohamed Sadaq
9. M.K.A. Kithuhu Mohamed
10. T.S.M. Basheer
11. Arabi Ismail
12. S.H. Syed Ibrahim
13. A.W. Saibudeen
14. A.S. Syed Omer
15. S.O. Rakeebudeen
16. A. Yaseen
17. K.V.S. Habib Mohamed
18. K.V. Shahul Hameed
19. S.M. Rafi Ahamed
20. M.A. Abdul Azeez
21. M.I. Seyed Ahamed Salih
22. K.M.S. Mohamed Shamsudeen
23. S.S. Abdul Azeez .. Petitioners

-Vs-

1. Tamil Nadu Wakf Board,
rep. by its Chairman,
No.3, Santhome High Road,
Chennai. .. Respondent

2. K.S. Sheik Abdul Cader .. Respondent No.2 impleaded
as per order dt.7-3-03

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

!For Petitioner : Mr.R. Krishnamoorthy

Senior Counsel for
Mr.K.S. Ahmed

^For Respondent : Mr. T.R. Mani
Senior Counsel for
Mr.A.S. Kaizer

Proposed Respondent-2: Mrs. Chitra Sampath

:J U D G M E N T

This writ petition has been filed for issuing Writ of Certiorarified Mandamus quashing a portion of the order dated 29.7.2000 in Rc.No.51 42/B1/93/TUT and for a further direction to Wakf Board to constitute the electorate of the General Council in accordance with bye-laws of the Wakf framed by the General Council on 29.7.1960.

2. The petitioners are the members of the General Council and some of them are office bearers of the Managing Committee. The Wakf was formed in 1958 on the land donated by one Jb.L.K. Sheik Mohamed, who is still continuing as Muthawalli of the Wakf. The first General Council meeting of the Wakf was held on 3.6.1960 and on 29.7.1960 the General Council framed bye-laws for the Wakf which was approved by the members of Jamath on the said date.
The respondent Wakf Board passed an order on 18.4.1998 regarding election to the Executive Committee and W.P.No.7307 of 1998 was filed by the Muthawalli. Said writ petition was disposed of on 3.2.2000 directing the Wakf Board to reconsider the question of electorate of the General Council for the purpose of electing the Managing Committee. Subsequently, on 25.4.2000, the present impugned order has been passed by the Board.

3. The relevant portion of the said order is to the following effect :
 In the result, this Board is of the view that the General Body meeting in respect of this Wakf held on 3-6-1960 should be taken into account as basis towards finalising the electorate for the General Council. It is evident from the copy of the minutes dated 3-6-1960 available in this office pertaining to this Wakf reveals that 366 muslim members of Kayalpatnam attended the said meeting. These 366 members should be primarily fixed as the electorate in respect of this Wakf. Among these 366 persons some of the members might have expired and some of the members might have migrated to other part. The Chief Executive Officer of the Tamilnadu Wakf Board is hereby directed to give suitable instructions to the Field Officers of this region to peruse the minute books carefully in respect of the General Body meeting held on 30-6-1960 and work out the identity of these persons. The Muthawalli who is presently holding the office of this Wakf is hereby directed to co-operate

with the Field Officers by producing the Minute book without any delay for perusal and he shall also assist the Field Officers in identifying the voters. Among these 366 members such of those persons who are alive and their male descendants who have attained the age of 18 years, such of those persons who are not alive and such of those persons who have migrated to other parts their male descendants also who have attained the age of 18 years are eligible to become the members of this Jamath subject to the condition of the byelaws of this Wakf to be enrolled as electorate in respect of the General Council of this Wakf. This process should be completed within a period of 60 days from this date and the Chief Executive Officer should place the list of electorate for approval before the Board, and the Board after due scrutiny and approval shall announce the further process of Election.

The petitioners are aggrieved by the portion of the above order which has been emphasised.

4. It has been contended that the aforesaid direction by the Wakf Board is contrary to the bye-laws and the Board seems to have given hereditary character to the electorate by directing that the original 3 66 members who formed Wakf in 1960 should be fixed as primary members and their male descendants who have attained the age of 18 years should be eligible to elect the members of the General Council. It has been contended that the aforesaid direction is in excess of jurisdiction vested under Section 32 of the Wakf Act and contrary to the provisions contained in bye-laws of the Wakf.

5. Learned counsel appearing for the respondent Wakf Board has contended that no illegality has been committed by the Board. The Intervener, who has been subsequently permitted to be impleaded as a party, has also contended that the writ petition is not maintainable.

6. The relevant provisions contained in the bye-laws as translated by the High Court office reads as follows:-

 Rules and Regulations :

. . . Those who have duly approved this Jamiul Azhar Jumma Masjid which was established by the grace of Allah on the 26th day of September 1958, and come to offer their prayers regularly while they are in town, are the members of Jammaath of this Masjid. After properly ascertaining such people the male members above18 years of age will be selected and the General Body of the Jamiul will be constituted. The executive Committee is empowered to increase the members in the General Body taking into consideration the aforesaid standards and the future population. The members of the General Body Committee will select important persons and constitute the Executive Committee. The executive committee is empowered to increase or decrease the number in the Executive Committee in future.
. . . The Mutawalli alone has the absolute authority to convene the General Body Meeting which selects the Executive Committee and to decide as to who are all the members of our Jamia Jamaath and to register it in the book.

7. A perusal of the Rules and Regulations makes it clear that the Executive Committee is empowered to increase or decrease the members in the General Body taking into consideration the norms indicated in the Rules. The Rules and Regulations indicate that those who owe allegiance to concerned Jamaath and come to offer their prayers regularly while they are in town are the members of the Jamaath and the General Body of the Jamaath would be constituted of such male persons, who are above 18 years of age. Therefore, a person is entitled to be the member of the General Body on the fulfilment of three conditions, namely (1) he must be a male above 18 years of age, (2) he must be the follower of Jamaath established on 26.9.1958 and (3) he must be coming to the Mosque to offer the prayer regularly while he is in town.

8. It is no doubt true that at the time when the mosque was established, 366 persons who had attended the meeting were the primary members. The subsequent increase in the members of the General Body can be effected by the Executive Committee by taking into consideration the norms already indicated and the future population. However, there is no condition laid down anywhere that only the descendants of the original 366 members would be entitled to be the members of the General Body in future. Apart from three requirements or norms, which have already been explained, there is no other norm and the power is vested with the Executive Committee to increase the members of the General Body taking into consideration the aforesaid norms and the future population. The subsequent provision to the effect that Mutawalli alone has absolute authority to decide who are all the members of Jamia Jamaath and to register it in the book is a power to be exercised only when the Executive Committee is not officiating.

9. The observation of the respondent to the effect that Among these 366 members such of those persons who are alive and their male descendants who have attained the age of 18 years, such of those persons who are not alive and such of those persons who have migrated to other parts their male descendants also who have attained the age of 18 years are eligible to become the members of this Jamath is not in consonance with the Rules. Membership cannot be confined to the descendants of the original 366 members as no such intention has been expressed anywhere in the Rules and Regulations. On the other hand even if a person is not a descendant of the original 366 members, he would be entitled to be registered as a member, provided he fulfils the three requirements already indicated and merely because he is not a descendant of original 366 members would not be a ground to exclude him from becoming a member.

10. Even the respondent No.1 has accepted that after 1960 several meetings of the General Body had taken place. As already indicated, it is the power of the Executive Committee to increase the members in the General Body taking into consideration the norms indicated in the Rules and Regulations. It is obvious that after 1960 such procedure had been followed and the membership was increased from time to time. Therefore, the respondent No.1 need not have excluded the subsequent increase in the General body and confined the same to original 366 members and their descendants.

9. For the aforesaid reasons, the writ petition is allowed and the

order passed by the respondent is quashed and the respondent is required to consider afresh the matter in the light of the observations made. The respondent shall give an opportunity of hearing to the persons who are presently discharging the function of the Executive Committee by virtue of the order passed by the High Court on the earlier occasion and also the present interveners. After going through the relevant documents to be produced by various persons concerned, the persons who are the members of the General Body have to be ascertained and thereafter a new Executive Committee and other office bearers shall be elected in accordance with the procedure. The meeting is to be convened by the respondent No.1 and the election/selection can take place in the presence of a representative of the respondent No.1. This process should be completed within a period of four months from the date of receipt of the order and the present Executive Committee shall continue to remain in charge on adhoc basis for day-to-day administration. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Index : Yes
Internet : Yes
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To

Tamil Nadu Wakf Board,
rep. by its Chairman,
No.3, Santhome High Road,
Chennai.